

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

v.

JAMES TROIANO,

Defendant.

Criminal No. CR05-00261 HG-01

MEMORANDUM IN SUPPORT OF MOTION

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An indigent defendant in a federal criminal proceeding is ordinarily entitled to a waiver of filing fees, appointment of counsel on appeal and necessary transcripts, unless an appeal would be frivolous. 18 U.S.C. §§ 1915 and 3006A. *Johnson v. United States*, 352 U.S. 565 (1957); *Hardy v. United States*, 375 U.S. 277 (1964).

If a statute did not so provide, then the due process component of the Fifth Amendment would so require. See *Griffin v. Illinois*, 351 U.S. 12 (1956); *Douglas v. California*, 372 U.S. 353 (1963); *Anders v. California*, 386 U.S. 738 (1967).

Ninth Circuit Court Local Rule, 4-1, implementing these statutory and constitutional provisions provides for appointment of present counsel to represent Defendant-Appellant, on appeal as follows:

If the district court finds that appointment of counsel is warranted, the court shall appoint the counsel who

represented the defendant in district court, a Criminal Justice Act defender, or a panel attorney to represent the defendant or petitioner on appeal.

Based on the foregoing and the attached declaration of Walter R. Schoettle, Defendant-Appellant respectfully requests appointment of Walter R. Schoettle to represent him on appeal, for transcripts to be provided as requested at government expense and for a waiver of fees and costs on appeal.

Dated: Honolulu, Hawaii, September 21, 2006.


WALTER R. SCHOETTLE,
Attorney for Defendant-Appellant